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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 ERIC SANFORD,

14 Defendant.

CASE NO. CR19-0172JLR

ORDER DENYING MOTION TO  
REOPEN DETENTION  
HEARING AND FOR  
TEMPORARY RELEASE

15 **I. INTRODUCTION**

16 Before the court is Defendant Eric Sanford's motion to reopen his detention  
17 hearing. (Mot. (Dkt. # 39).) Mr. Sanford moves to reopen his detention hearing pursuant  
18 to 18 U.S.C. § 3142(f), or alternatively, for temporary release under 18 U.S.C.  
19 § 3142(i)(4).<sup>1</sup> (*See generally id.*) Plaintiff United States of America ("the Government")

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21 <sup>1</sup> The caption of Mr. Sanford's motion indicates that he moves alternatively under 18  
22 U.S.C. § 3142(i)(3). (*See* Mot. at 1.) However, based on the statutory language of § 3142(i)(3)  
and the body of Mr. Sanford's motion, which refers to § 3142(i)(4) (*see* Mot. at 22), the citation  
in the caption appears to be a typographical error.

1 opposes Mr. Sanford's motion. (*See* Resp. (Dkt. # 41).) The court has reviewed the  
 2 motion, the Government's response, the parties' submissions in support of and in  
 3 opposition to the motion, and the applicable law. Being fully advised,<sup>2</sup> the court  
 4 DENIES Mr. Sanford's motion.

## 5 **II. BACKGROUND**

6 The charges against Mr. Sanford arise out of an August 11, 2019, incident. (*See*  
 7 *generally* Compl. (Dkt. # 1).) A Seattle Police Department ("SPD") officer stopped Mr.  
 8 Sanford's car. (*See id.* ¶¶ 6-8.) While the officer was speaking to Mr. Sanford, the  
 9 officer observed a handgun in open view on the passenger seat of Mr. Sanford's car. (*See*  
 10 *id.* ¶ 9.) The officer ran a background check on Mr. Sanford, learned that he was  
 11 convicted felon, and arrested him for unlawful possession of a firearm. (*See id.* ¶ 11.)  
 12 On August 23, 2019, the Government charged Mr. Sanford with one count of being a  
 13 felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). (*See generally id.*)

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 16 <sup>2</sup> Mr. Sanford requests oral argument on his motion. (*See* Mot. at 1 (stating in the  
 17 caption, "telephonic oral argument requested")); *see also* Local Rules W.D. Wash. CrR  
 18 12(b)(12) ("A party desiring oral argument shall so indicate by typing ORAL ARGUMENT  
 19 REQUESTED in the caption of the motion or responsive brief."). However, the parties have  
 20 fully briefed the issues, and oral argument would not assist the court's decisional process.  
 21 Accordingly, the court DENIES Mr. Sanford's request. *See id.* ("Unless otherwise ordered by  
 22 the court, all motions will be decided by the court without oral argument."); *see also United*  
*States v. Hearn*s, No. 1:20-CR-110, 2020 WL 1493747, \*3 (N.D. Ohio Mar. 27, 2020) ("[W]hile  
 the Bail Reform Act is silent about whether a defendant is entitled to an in-court hearing on an  
 appeal of a detention order, there is ample authority for the conclusion that the Court may decide  
 the motion on the filings (including proffers offered by counsel) as opposed to a hearing.");  
*United States v. McKnight*, No. CR18-16 TSZ, 2020 WL 1872412, at \*1 (W.D. Wash. Apr. 15,  
 2020) (concluding that the defendant's motion under 18 U.S.C. § 3142(f) may be denied without  
 a hearing).

1 Mr. Sanford initially appeared in the Western District of Washington on August  
2 28, 2019. (*See* 8/28/19 Min. Entry (Dkt. # 6).) The Government moved to detain Mr.  
3 Sanford. (*See* Detention Mot. (Dkt. # 7).) Mr. Sanford sought release on bond and  
4 United States Probation and Pretrial Services supported Mr. Sanford's release on  
5 conditions. (*See* 9/3/19 Min. Entry (Dkt. # 10) ("Pretrial services report reviewed,  
6 recommends release. . . . Defense counsel agrees with PTS recommendation for  
7 release.")) On September 3, 2019, after hearing from both parties, United States  
8 Magistrate Judge John L. Weinberg ordered Mr. Sanford detained. (*See* Detention Order  
9 (Dkt. # 11).)

10 In detaining Mr. Sanford, Magistrate Judge Weinberg found "by clear and  
11 convincing evidence, that no condition or combination of conditions which [Mr. Sanford]  
12 can meet would reasonably assure the safety of other persons and the community." (*Id.*  
13 at 1.) Magistrate Judge Weinberg relied upon the circumstances surrounding the current  
14 charge including the fact that handgun retrieved at the scene "contained a magazine and a  
15 bullet in the chamber" (*id.* ¶ 1), the nature of Mr. Sanford's criminal history including a  
16 2007 felony conviction in state court for delivery of cocaine and a 2009 conviction in  
17 federal court for being a felon in possession of a firearm (*id.* ¶ 2), Mr. Sanford's history  
18 "as a street level leader of the Deuce & Black Gangster Disciples" (*id.* ¶ 3), and Mr.  
19 Sanford's prior history on supervised release in which the court revoked his release and  
20 imposed additional imprisonment due to a series of alcohol and drug violations and an  
21 additional offense of assault and resisting arrest (*id.* ¶ 4). Magistrate Judge Weinberg  
22 also found that "[g]iven [Mr. Sanford's] earlier conviction for felon in possession, there

1 is no reason to believe he would, if released in this case, comply with a condition  
2 prohibiting him from possession of firearms.” (*Id.* ¶ 5.)

3 On September 11, 2019, a grand jury sitting in the Western District of Washington  
4 returned a one-count indictment charging Mr. Sanford with being a felon in possession of  
5 a firearm. (*See* Indictment (Dkt. # 13).) Mr. Sanford waived a jury trial and the court set  
6 his bench trial for March 24, 2020. (*See* 3/12/19 Min. Entry (setting bench trial); Jury  
7 Waiver (Dkt. # 29).) However, prior to that date, the parties reached an agreement  
8 resolving Mr. Sanford’s case. (*See* Resp. at 3.) Mr. Sanford agreed to enter a plea of  
9 guilty as charged, and the parties agreed to jointly recommend a sentence of 27 months of  
10 incarceration. (*See id.*)

11 Due to the crisis surrounding the current Coronavirus Disease 2019  
12 (“COVID-19”) public health emergency, on March 17, 2020, the United States District  
13 Court for the Western District of Washington issued General Order No. 02-20. *See*  
14 General Order (“GO”) 02-20 (Mar. 17, 2020). The order closed the courthouse to the  
15 public and continued all criminal matters scheduled prior to June 1, 2020, pending further  
16 order of the court. *See id.* As a result, the court vacated Mr. Sanford’s trial date and set a  
17 status hearing for June 1, 2020. (*See* 3/24/20 Order (Dkt. # 37).) On April 13, 2020, the  
18 United States District Court for the Western District of Washington extended General  
19 Order No. 02-20 and continued all criminal matters scheduled prior to July 1, 2020. *See*  
20 GO 07-20 (Apr. 13, 2020). Thus, on April 23, 2020, the court continued Mr. Sanford’s  
21 June 1, 2020, status conference to July 1, 2020. (4/23/20 Order (Dkt. # 47).)

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1 On April 17, 2020, Mr. Sanford moved to proceed with his guilty plea by  
2 teleconferencing. (Telecon. Plea Mot. (Dkt. # 38).) On April 24, 2020, the court granted  
3 Mr. Sanford's motion but clarified that the plea hearing would be conducted via video  
4 teleconference before a Magistrate Judge. (4/24/20 Order (Dkt. # 48) at 5.) The court  
5 also ordered the Clerk to set the video teleconference hearing "as soon as is practicable."  
6 (*Id.*)

7 On April 17, 2020, Mr. Sanford also moved to reopen his detention hearing. (*See*  
8 Mot.) Mr. Sanford argues that "[t]he current [COVID-19] pandemic drastically alters  
9 [the court's] calculus [concerning detention], constituting a 'compelling reason'  
10 warranting his temporary release until the pandemic has ended . . . ." (Mot. at 2.) Other  
11 than the COVID-19 public health crisis, Mr. Sanford does not raise any other  
12 circumstance warranting his release from detention. (*See generally id.*) Mr. Sanford  
13 does not assert that he falls into any category of particular risk with regard to contracting  
14 COVID-19. (*See Reply* (Dkt. # 46) at 5 ("Mr. Sanford has never alleged that he is  
15 medically vulnerable.")) The court now considers Mr. Sanford's motion.

### 16 III. ANALYSIS

17 As noted above, Mr. Sanford moves to reopen his detention hearing under 18  
18 U.S.C. § 3142(f), or alternatively, for temporary release under 18 U.S.C. § 3142(i)(4).  
19 The court considers Mr. Sanford's grounds under each provision in turn.

#### 20 A. 18 U.S.C. § 3142(f)

21 A detention hearing may be reopened if the court finds that "information exists  
22 that was not known to the movant at the time of the hearing" and that such information

1 has “a material bearing” on the issues of whether the defendant poses a flight risk or  
2 whether the defendant poses danger to the community, or both. *See* 18 U.S.C. § 3142(f).  
3 Mr. Sanford argues that information relating to the COVID-19 public health crisis was  
4 not available to the court when he was detained, and therefore, the court did not consider  
5 the risks or the danger posed to the community by the possibility of an outbreak of  
6 COVID-19 at the Federal Detention Center (“FDC”) where Mr. Sanford is detained. (*See*  
7 *generally* Mot.)

8 In recent weeks, federal district courts across the country have considered large  
9 numbers of motions to reopen detention hearings under 18 U.S.C. § 3142(f) predicated on  
10 the current COVID-19 public health crisis. *See United States v. McKnight*, No.  
11 CR18-16TSZ, 2020 WL 1872412, at \*1 (W.D. Wash. Apr. 15, 2020) (collecting  
12 numerous cases in which the pretrial detainee unsuccessfully relied on the current  
13 COVID-19 crisis). The majority of these decisions “make clear . . . that COVID-19 does  
14 not support the reopening of a detention hearing because ‘the governing legal standard “is  
15 *not* . . . the harms that [a defendant’s] incarceration [might] cause (however  
16 substantial),”’ but rather “‘the danger” that “would be posed *by the person’s release.*”’”  
17 *Id.* (quoting *United States v. Calvert*, No. 19-40068-03-HLT, 2020 WL 1847754, at \*2  
18 (D. Kan. Apr. 13, 2020) (quoting *United States v. Lee*, No. 19-CR-298, 2020 WL  
19 1541049, at \*5 (D.D.C. Mar. 30, 2020), and 18 U.S.C. § 3142(g)(4)). Most courts to  
20 consider the issue have found that the COVID-19 pandemic does not in and of itself raise  
21 a change in circumstance that has a “material bearing” on whether there are conditions of  
22 release for the defendant that will reasonably assure the safety of the community or the

1 appearance of the defendant. *See id.* at \*2 (citing *United States v. Dodd*, No. 20-CR-0016  
 2 (NEB/HB), 2020 WL 1547419, at \*2 (D. Minn. Apr. 1, 2020)); *see also United States v.*  
 3 *Flores-Lopez*, No. CR19-203RSM, 2020 WL 1862599, at \*2 (W.D. Wash. Apr. 14,  
 4 2020) (stating that “the Court agrees with the Government that the current COVID-19  
 5 pandemic alone was not a valid basis to reopen the issue of detention” under 18 U.S.C.  
 6 § 3142(f)).

7 Mr. Sanford’s motion for reopening his detention hearing is founded on  
 8 speculation regarding the risk that he will contract COVID-19 while he is at the FDC and  
 9 speculation regarding the impact any such infection would have on his health should he  
 10 contract the disease. (*See generally* Mot.) Indeed, at present, there are no known  
 11 COVID-19 infections at the FDC. *See* <https://www.bop.gov/coronavirus/> (visited May 1,  
 12 2020);<sup>3</sup> (*see also* Mot. at 7 (acknowledging that “no one has tested positive or died at the  
 13 FDC”)). The court does not minimize the risks inherent in the COVID-19 pandemic and  
 14 the particular challenges faced by detention facilities in light of this public health crisis.  
 15 However, the COVID-19 pandemic does not have a “material bearing” on the factors the  
 16 court considers here—whether the defendant poses a flight risk and whether the  
 17 defendant poses a danger to the community. *See* 18 U.S.C. § 3142(f). Indeed, if the  
 18 COVID-19 pandemic were sufficient grounds alone to reopen a detention hearing under  
 19 18 U.S.C. § 3142(f), then the court would be hard pressed to envision a defendant who  
 20 would not be presently so entitled. The court cannot conclude that this is the result

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 22 <sup>3</sup> *See King v. Cty. of L.A.*, 885 F.3d 548, 555 (9th Cir. 2018) (“[W]e take judicial notice of  
 the undisputed and publicly available information displayed on government websites.”).

1 Congress intended when it added the statutory language upon which Mr. Sanford relies.  
2 Accordingly, the court concludes that the existence of the pandemic alone does not justify  
3 an alteration in the court's original decision to detain Mr. Sanford.<sup>4</sup>

4 Moreover, Magistrate Judge Weinberg's original grounds for detaining Mr.  
5 Sanford were sound. In particular, the court notes Mr. Sanford's criminal history  
6 including a 2007 felony conviction in state court for delivery of cocaine and a 2009  
7 conviction in federal court for being a felon in possession of a firearm. (Detention Order  
8 ¶ 2.) In addition, the court notes Mr. Sanford's prior history on supervised release in  
9 which the court revoked his release and imposed additional imprisonment due to a series  
10 of alcohol and drug violations and an additional offense of assault and resisting arrest.  
11 (*Id.* ¶ 4.) Finally, this court agrees with Magistrate Judge Weinberg's assessment that  
12 "[g]iven [Mr. Sanford's] earlier conviction for felon in possession, there is no reason to  
13 believe he would, if released in this case, comply with a condition prohibiting him from  
14 possession of firearms." (*Id.* ¶ 5.)

15 In sum, Mr. Sanford's criminal history and his history of failing to abide by the  
16 conditions of his supervision together with the nature of those violations support the

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17 <sup>4</sup> The court declines to conclude that it could never consider the COVID-19 public health  
18 crisis as relevant to its consideration of community safety under 18 U.S.C. § 3142(f). However,  
19 Mr. Sanford fails to make that case here—particularly in light of the current conditions at the  
20 FDC. As noted above, there is no evidence of a Covid-19 outbreak at the FDC, and the facility  
21 has implemented robust Bureau of Prison measures to guard against such an outbreak and to  
22 contain one should it occur, *see* [https://www.bop.gov/resources/news/20200313\\_covid-19.jsp](https://www.bop.gov/resources/news/20200313_covid-19.jsp)  
(visited May 1, 2020); *see King*, 885 F.3d at 555 (permitting "judicial notice of the undisputed  
and publicly available information displayed on government websites"); *see also* Resp. at 10-12  
(detailing the BOP measures implemented in response to the COVID-19 pandemic). Further, the  
facility is far from overcrowded at only 68% of capacity. (*See* Mot. at 6 ("[The FDC] currently  
houses 684 people with a capacity for 1000.").)



1 court's original decision to detain him, and the court denies his motion to reopen his  
2 detention hearing under 18 U.S.C. § 3142(f).

3 **B. 18 U.S.C. § 3142(i)(4)**

4 Mr. Sanford also moves under 18 U.S.C. § 3142(i)(4) for temporary release on  
5 grounds that the COVID-19 public health crisis constitutes "another compelling reason"  
6 for release under this provision. The relevant portion of § 3142(i)(4) states:

7 The judicial officer may, by subsequent order, permit the temporary release  
8 of the person, in the custody of a United States marshal or another appropriate  
9 person, to the extent that the judicial officer determines such release to be  
necessary for preparation of the person's defense or for another compelling  
reason.

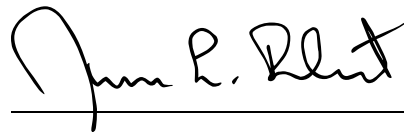
10 18 U.S.C.A. § 3142(i)(4). The only basis Mr. Sanford provides for finding "another  
11 compelling reason" under this provision is the existence of the COVID-19 pandemic.  
12 (*See generally* Mot.) As the court has noted above, Mr. Sanford does not allege any  
13 health conditions that would render him particularly vulnerable to a COVID-19 infection.  
14 (*See* Reply at 5.) Further, as also noted above, there is no evidence that any COVID-19  
15 infections are present at the FDC where Mr. Sanford is detained. Although the court  
16 declines to hold that the COVID-19 pandemic may never contribute to finding "another  
17 compelling reason" for temporary release under 18 U.S.C. § 3142(i)(4), Mr. Sanford has  
18 not made that case here. Indeed, as the court similarly discussed with respect to Mr.  
19 Sanford's motion under 18 U.S.C. § 3142(f), if the mere existence of the COVID-19  
20 pandemic alone provides "another compelling reason" for temporary release, then the  
21 court would be hard-pressed to envision a defendant who would not presently be entitled  
22 to relief under this provision. Similar to § 3142(f), the court cannot conclude that such a

1 result is what Congress intended when it added the temporary release provision to  
2 § 3142(i)(4). Accordingly, the court denies Mr. Sanford's motion under this provision as  
3 well.

4 **IV. CONCLUSION**

5 For the reasons stated above, the court DENIES Mr. Sanford's motion to reopen  
6 his detention hearing under 18 U.S.C. § 3142(f) and for temporary release under 18  
7 U.S.C. § 3142(i)(4).

8 Dated this 4th day of May, 2020.

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11 JAMES L. ROBART  
12 United States District Judge  
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